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7 BARRY COHEN, CHRIS COHEN (aka CHRISTENE COHEN), the F/V POINT LOMA and
Claimant, F/V POINT LOMA Fishing Company, Inc.

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

Pursuant to the Court's Guidelines for Trial and Final Pretrial Conference in Civil Bench Cases Before the Honorable William Alsup, Defendants Barry Cohen, Chris Cohen, F/V Point Loma, and Counterclaimant, F/V Point Loma Fishing Company, Inc. (collectively, "Defendants"), attach the following designations of witness testimony for witnesses that it intends to call by deposition at trial for:

1. Christene Cohen (Attachment A)
2. Dave Cantrell (Attachment B, C)

1 Defendants accept Plaintiff's, Del Mar Seafoods, Inc.'s, insertions for the testimony of
 2 both Christene Cohen and Dave Cantrell on the basis of completeness.

3 Rulings are needed only as to each of the Fed. R. Evid 802 and 602 objections asserted by
 4 Plaintiff, Del Mar Seafoods, for the testimony of Dave Cantrell. The portions of the Dave Cantrell
 5 testimony objected to by Plaintiff as hearsay fall within the hearsay exception under Fed. R. Evid.
 6 804(b)(1) because the designations are from the deposition of Dave Cantrell, Mr. Cohen's
 7 accountant, *taken by Plaintiff* in the present case in which Plaintiff had the opportunity to develop
 8 Mr. Cantrell's testimony directly. In addition, Mr. Cantrell lives more than 100 miles from the
 9 jurisdiction of this Court in Arroyo Grande, California and is therefore unavailable to testify at
 10 trial. Plaintiff also mistakenly objects on the basis of lack of personal knowledge because Mr.
 11 Cantrell is testifying as to his understanding or belief as to Mr. Cohen's statements to him
 12 regarding the incorrect allocations of payments on the schedule of payments that Mr. Cohen gave
 13 to him in connection with the preparation of a tax return. Defendants have inserted the relevant
 14 portions of Mr. Cantrell's testimony in Attachment C as rebuttal to lay the foundation for Mr.
 15 Cantrell's personal knowledge.

16
 17 DATED this 20th day of May, 2008.

18
 19 Respectfully submitted,

20
 21 DAVIS WRIGHT TREMAINE LLP

22 By: /s/ Gwen Fanger
 23 James P. Walsh
 24 Gwen Fanger

25
 26 Attorneys for Defendants
 27 BARRY COHEN, CHRIS COHEN (aka
 28 CHRISTENE COHEN), the F/V POINT
 LOMA and Claimant, F/V POINT LOMA
 FISHING COMPANY, INC

DAVIS WRIGHT TREMAINE LLP

Attachment A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

DEL MAR SEAFOODS, INC.,)
vs.)
Plaintiff,)
BARRY COHEN, CHRIS COHEN (aka)
CHRISTENE COHEN), in personam)
and F/V POINT LOMA, Official)
Number 515298, a 1968)
steel-hulled, 126-gross ton,)
70.8-foot long fishing vessel,)
her engines, tackle,)
furniture, apparel, etc., in)
rem, and Does 1-10,)
Defendants.)

)

vs.) NO. CV 07-02952 WHA

BARRY COHEN, CHRIS COHEN (aka)
CHRISTENE COHEN), in personam)
and F/V POINT LOMA, Official)
Number 515298, a 1968)
steel-hulled, 126-gross ton,)
70.8-foot long fishing vessel,)
her engines, tackle,)
furniture, apparel, etc., in)
rem, and Does 1-10,)
Defendants.)

)

DEPOSITION OF CHRISTENE COHEN

Scottsdale, Arizona
Friday, January 11, 2008
10:00 a.m.

REPORTED BY RANDI J. FRIEDMAN, Arizona CSR No. 50585

**CERTIFIED
COPY**

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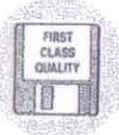
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Christene Cohen - 01/11/08

2 Friday, January 11, 2008

3 10:00 a.m.

5 CHRISTENE COHEN

6 a witness herein, after having been first duly sworn,
7 testified as follows:

• • •

EXAMINATION

11 BY MR. POULOS:

12 Q. Good morning, Ms. Cohen. Could you state your
13 full name for the record.

14 A. Christene, spelled e-n-e. Christene Layne,
15 L-a-y-n-e, Cohen, C-o-h-e-n.

16 Q. MS. Cohen, have you ever had your deposition
17 taken before?

18 A. No.

19 Q. You're currently separated from your husband,
20 Barry Cohen; is that right?

21 A. Yes.

22 Q. And how long have you been separated?

23 A. Since December 28th of '07.

24 Q. When did you file for divorce?

A: The exact date I'm not I don't know.

Christene Cohen - 01/11/08

1 ~~Liabilities?~~

2 A. No.

3 Q. Are you aware of any debt that you owe to Del Mar
4 Seafoods?

5 A. Yes.

6 Q. All right. Do you know how much that debt is?

7 A. No.

8 Q. What is the debt for?

9 A. An agreement between Joe Cappuccio and Barry
10 Cohen.

11 Q. For what?

12 A. I'm not sure.

13 Q. What is your understanding of it?

14 A. A business that -- an agreement that the two of
15 them had.

16 Q. What was that business agreement for?

17 A. The boat. It had to do with the Point Loma.

18 Q. Do you know what it had to do with the Point
19 Loma?

20 A. No.

21 Q. ~~Have you ever seen a document titled Initial
22 Disclosure in this case?~~

23 A. I don't know.

24 Q. ~~Have you seen any pleadings in this case?~~

25 A. Yes.

Christene Cohen - 01/11/08

1 A. Yes.

2 Q. Who did you report to?

3 A. Joe Reggio and Barry Cohen.

4 Q. Are you aware that at the beginning of this
5 litigation, the vessel, the Point Loma, was arrested in the
6 Northern District of California?

7 A. Yes.

8 Q. When did you become aware of that?

9 A. The day my attorney Dennis Caspe was served or
10 notified.

11 Q. Your attorneys in this case have served a
12 document titled Defendants' Initial Disclosures Pursuant to
13 F.R.C.P., that's Federal Rules of Civil Procedure, 26(a)(1),
14 and it lists you as being knowledgeable on a number of
15 topics. I want to know if you are or are not knowledgeable
16 in these topics.

17 Facts pertinent to the fishing business and
18 activities of defendants; that would be yourself, Barry and
19 the F/V Point Loma.

20 Are you knowledgeable about the facts pertinent
21 to the fishing business?

22 A. Can you clarify time?

23 Q. Sure. The time period of, say, 2004 through
24 2007.

25 MS. FANGER: I'm going to object. The term.

Christene Cohen - 01/11/08

1 "facts" is awfully vague in that, so maybe you'll need to go
2 through specifics.

3 ~~MR. POULOS. It's your document, counsel. If~~
4 ~~you think it's vague, you can explain that to the Court.~~

5 THE WITNESS: I would say I was knowledgeable
6 up until 2005.

7 BY MR. POULOS:

8 Q. The end of 2005?

9 A. Uh-huh.

10 Q. That's yes?

11 A. Yes.

12 Q. Why the end of 2005?

13 A. It depends on the knowledgeable -- what you mean
14 by "knowledgeable." I had more contact with the boat, the
15 captains, the crew, and then I didn't have.

16 Q. After 2005?

17 A. About that time period; yes.

18 Q. What was your contact with the captains of the
19 fishing vessel, Point Loma, before the end of 2005?

20 A. They would call the house. They would want to
21 talk to Barry. If they had a problem, what have you, they
22 called the home.

23 Q. Did you talk to them about their fishing
24 operation?

25 A. More so about their safety. You know, if it was

Christene Cohen - 01/11/08

1 windy, da-dee-dee-da. Oh, I'm sorry. If they were at home
2 port or, you know, where they were.

3 Q. Did you talk to captains at all about their catch
4 and how the vessel was doing?

5 A. Yes.

6 Q. Yes?

7 A. Yes.

8 Q. All right. And that was -- were you -- since you
9 were doing payroll, were you also doing payroll for the
10 fishing vessel, Point Loma?

11 A. No.

12 Q. Who was doing that?

13 A. Barry Cohen.

14 Q. Do you know what the earnings were for the Point
15 Loma in, say, between 2004 and 2007?

16 A. No.

17 Q. Do you have any information at all about the
18 profits and loss of the vessel during any period of that
19 time?

20 A. No.

21 Q. The fishing vessel is controlled through a Sub
22 S-Corporation; isn't it?

23 A. Clarify. I don't know.

24 Q. It's owned by you, but then you transferred title
25 to the Point Loma Fishing Company, Inc.; is that right?

Christene Cohen - 01/11/08

1 A. I don't know.

2 Q. You don't know what the current ownership is of
3 the fishing vessel?

4 A. No.

5 Q. You said you're a half owner of it. You say you
6 do not know how it's owned?

7 A. I do not.

8 Q. Did you participate in setting up a California
9 Sub S-Corporation?

10 A. There was a meeting, and I don't know the
11 specifics about it.

12 Q. When you say there was a meeting, what meeting
13 are you referring to?

14 A. Some kind of meeting. Barry told me that we
15 needed protection in case a crew person got injured on the
16 boat or something like that.

17 Q. Did he tell you, you needed protection in case --
18 well, you're aware of a lawsuit filed against the Port St.
19 Louis Harbor District; is that right?

20 A. Yes.

21 Q. Did Barry tell you, you needed protection against
22 the possible loss of that lawsuit?

23 A. No.

24 Q. Was the vessel transferred into the Sub
25 S-Corporation in order to protect it in case you needed to

Christene Cohen - 01/11/08

1 A. I don't know.
2 Q. Do you have any knowledge of the damages that are
3 alleged to have been sustained by the fishing vessel as a
4 result of the arrest?

5 A. Just what I have read.

6 Q. What have you read?

7 A. What was in the lawsuit. The papers from the
8 lawsuit.

9 Q. Okay. But independent of just papers in the
10 lawsuit --

11 A. No.

12 Q. -- you actually don't have any knowledge of that?

13 A. No.

14 Q. All right. Do you have any knowledge of what the
15 earnings have been of the fishing vessel in 2007?

16 A. No.

17 Q. Do you have any knowledge of the amount of the
18 mortgage owed on the vessel?

19 A. No.

20 Q. Do you have any knowledge of the amount of money
21 owed under a promissory note to Del Mar?

22 A. No.

23 Q. Did you have knowledge of the amount owed on a
24 promissory note at the time that you signed that note?

25 A. Could you repeat that?

Christene Cohen - 01/11/08

1 Q. And what did he tell you?

2 A. He didn't know.

3 Q. You're aware that in the lawsuit against the Port

4 St. Louis Harbor District, there was a request for

5 attorneys' fees; is that right?

6 A. Yes.

7 Q. And you're aware that the request by Barry to

8 receive his attorneys' fees was denied by the Court?

9 A. Yes.

10 Q. And you're aware that the attorneys' fees in that

11 case owed to the Miller Star firm that represented Barry are

12 somewhere in the range of 2.2 million dollars; is that

13 right?

14 A. I don't know.

15 Q. You know it's in the million-dollar plus range?

16 A. Yes.

17 Q. Do you know it's in the 2 million dollar plus

18 range?

19 A. No.

20 Q. What was your understanding of the amount?

21 A. At the time the trial ended, I believed it was

22 over a million dollars.

23 Q. In that litigation, I'll represent to you that

24 Barry filed a declaration with the Court in which he said

25 that if it did not recover his attorneys' fees, he might

Completeness

Christene Cohen - 01/11/08

1 have to declare bankruptcy; were you aware of that?

2 A. No.

3 Q. Did Barry ever discuss with you the prospect that
4 he might have to declare bankruptcy?

5 A. No.

6 Q. Has that come up in your divorce proceedings?

7 A. No.

8 Q. What payments, if any, are you aware of under the
9 promissory note?

10 A. Only the 175,000-dollar one.

11 Q. When was that payment made?

12 A. When we lived in Aptos. The exact date, I don't
13 know.

14 Q. Do you have an understanding why that payment was
15 made?

16 A. Joe Roggio and Joe Cappuccio wanted a payment. A
17 big payment.

18 Q. Were you ever party to any discussions about what
19 would happen if a big payment was made?

20 A. No.

21 Q. Were you party to any discussions about the
22 accrual of interest on the promissory note?

23 A. No.

24 Q. Were you ever party to any discussions about the
25 forgiveness of any debt in return for payment?

Christene Cohen - 01/11/08

1 A. No.

2 Q. Were you ever party to any discussions about
3 timing of payments under that promissory note?

4 A. No.

5 Q. Did Barry ever tell you that he was not obligated
6 to make payments under that note?

7 A. No.

8 Q. You're an officer of the Point Loma Fishing
9 Company; is that right?

10 A. Part owner. Half, yes.

11 Q. As a half owner of that company, are you aware of
12 any agreements by the company that it would not need to make
13 payments on the promissory note?

14 A. Can you repeat that question?

15 Q. As a part owner of that company, half owner of
16 the company, are you aware of any agreements that the
17 company had with Del Mar that it would not have to make
18 payments on the note?

19 A. No.

20 Q. As a half owner of that company, are you aware of
21 any agreements between the company and Del Mar, that
22 interest would not accrue on that note?

23 A. No.

24 Q. ~~As a half owner of the company, are you aware of~~
25 ~~any agreements between your company and Del Mar, that~~

Christene Cohen - 01/11/08

1 A. No. No.

2 Q. Were you aware of any sales -- well, what was the
3 business that you understood of Old Port Fisheries/Del Mar?

4 A. They bought and sold seafood.

5 Q. Did they sell seafood to Michael Cohen?

6 A. I believe so; yes.

7 Q. And did they sell seafood to Leonard Cohen or his
8 business, Old Port, Inc.?

9 A. Yes.

10 Q. And were those sales done on an account basis?
11 In other words, their debts for their inventory that was
12 sold to them was put on an account they maintained with Old
13 Port Fisheries/Del Mar?

14 A. An invoice, yes.

15 Q. When the operation between -- of Old Port
16 Fisheries/Del Mar ended, were there still balances owed by
17 Michael and Leonard?

18 A. I do not know. No. I don't know.

19 Q. Did Barry ever tell you that he had agreed to be
20 responsible for payment of those balances owed to Del Mar
21 from Michael and Leonard?

22 A. No.

23 Q. Did you ever hear that from Michael or Leonard,
24 that Barry had said he would be responsible for those debts?

25 A. No.

Christene Cohen - 01/11/08

1 Q. Do you have any reason to disagree with that figure as the balance owed as of January 30th, 2007, under
2 the promissory note?

3 MS. FANGER: Objection. That assumes facts
4 not in evidence.

5 THE WITNESS: I don't know.

6 BY MR. POULOS:

7 Q. You don't have any basis to agree or disagree
8 with that figure?

9 A. None.

10 Q. Were you aware of any agreements to include
11 additional amounts of debt under the promissory note?

12 A. No.

13 Q. At the end of the Old Port Fisheries/Del Mar
14 Seafoods operation in Avila Beach, there was inventory still
15 left over; wasn't there?

16 A. I don't know.

17 Q. Were you still working at the -- for that entity
18 at the time that the entity shut down its operations?

19 A. Yes.

20 Q. Do you recall when that occurred?

21 A. No.

22 Q. Do you recall it being -- what month it occurred
23 in?

24 A. No.

Christene Cohen - 01/11/08

1 Q. Can you give me a year that that occurred?

2 A. No.

3 Q. In this Initial Disclosure, and we're going to
4 make this an exhibit, it says that you are knowledgeable
5 about quote, plaintiff, and I'll say the plaintiff is Del
6 Mar, my client. Plaintiff's breach of the promissory note
7 and ship mortgage."

8 What knowledge do you have of Del Mar's alleged
9 breach of the promissory note and ship mortgage?

10 A. Just that the vehicle was arrested unlawfully.

11 Q. Why do you say it was arrested unlawfully?

12 What's your knowledge?

13 MS. FANGER: Objection. That's asking for
14 privileged -- attorney/client privileged information.

15 MR. POULOS: You disclosed her as
16 knowledgeable about discoverable facts. I'm asking what
17 discoverable facts she has. Those are clearly outside of
18 non-discoverable attorney/client communications.

19 BY MR. POULOS:

20 Q. So apart from privileged communications from your
21 lawyer, what knowledge do you have of the alleged breach of
22 the promissory note and ship mortgage?

23 A. I wasn't notified.

24 Q. Of what?

25 A. That there was a problem of any kind.

Christene Cohen - 01/11/08

1 Q. Okay. From whom?

2 A. Either Del Mar or Barry Cohen.

3 Q. Okay. Apart from not being notified of a
4 problem, what do you mean by that?

5 A. I wasn't aware that anything was wrong and going
6 on.

7 Q. ~~How much money have you received from -- let's~~
8 ~~say in 2007, from the fishing vessel, Point Loma,~~
9 ~~operations?~~

10 A. Zero.

11 Q. How much did you receive in 2006 from the Point
12 Loma fishing vessel operations?

13 A. I think \$5,000.00.

14 Q. All right. That was your half, or was that the
15 full income to the corporation?

16 A. That was when I left the marriage.

17 Q. And how did you end up with \$5,000.00? What was
18 that for?

19 A. I was leaving the marriage and I needed some
20 money.

21 Q. Okay. And so did you understand that that was
22 income from the Point Loma fishing vessel's operations?

23 A. Yes.

24 Q. And why do you say that? Did it come from a
25 ~~special account?~~

Christene Cohen - 01/11/08

1 Q. Do you have any reason to believe that?

2 A. I don't know.

3 Q. As you sit here today, can you think of any
4 occasion where he's been dishonest with you?

5 A. No.

6 Q. Let me show you a better copy of that schedule of
7 payments. I found one. The one I'm going to show you was
8 marked as an exhibit to Barry's deposition in the Avila
9 Beach litigation.

[TRIAL EX. 37]

(Exhibit-6 was marked.)

11 That's, I believe, just a better copy of that
12 schedule of payments.

13 Does that help you in terms of whether you've
14 ever seen that before?

15 A. No.

16 Q. You still have never seen it?

17 A. I have never seen it.

18 Q. In your employment with Old Port Fisheries/Del
19 Mar, you were not the person responsible for keeping track
20 of the debts of Michael or Leonard to that entity; were you?

21 A. No.

22 Q. Who was?

23 A. I don't know.

24 Q. Does the name -- I think it's Harriett Shields?

25 A. The bookkeeper was Harriett Shields and Dean

Christene Cohen - 01/11/08

1 Smith.

2 Q. Okay. Do you know if they were the people who
3 would track those?

4 A. Yes.

[TRIAL EX. 39]

(Exhibit-7 was marked.)

[TRIAL EX. 39]

6 Q. Have you ever seen Exhibit-7 before?

7 A. No.

8 Q. How well do you know Joe Cappuccio?

9 A. Pretty well.

10 Q. All right. Do you have any reason to believe
11 that Joe Cappuccio has any malice or ill-will toward you or
12 Barry?

13 A. Not towards me, but I'm sure with Barry.

14 Q. And why are you sure with Barry?

15 A. They're in a lawsuit.

16 Q. Okay. Other than the fact that they're in a
17 lawsuit. I mean, he never made any statements to you --

18 A. No.

19 Q. -- that he was angry at Barry or --

20 A. Never.

21 Q. Okay. And he had never done anything to you that
22 made you think that he was not -- that he had some personal
23 reason to try to cause any harm to you or Barry?

24 A. Not to me.

25 Q. Anything with respect to Barry other than this

Christene Cohen - 01/11/08

1 Lawsuit?
2 A. Nothing comes to mind.
3 Q. Did you feel you were treated fairly as an
4 employee?
5 A. Yes.
6 Q. Are you aware of any claim being filed on your
7 behalf with the United States Marshal Service arising from
8 the loss of that fishing net?
9 A. No.
10 Q. How much was the net worth?
11 A. They're usually around \$30,000.00 a net.
12 Q. Do you know what size net this was?
13 A. No.
14 Q. Do you know when it had been purchased?
15 A. No. **[TRINEX. 37 OR 39]**
16 Q. Looking at A Exhibit-6 or 7, did Barry ever discuss
17 with you the addition of amounts beyond the \$215,000.00 to
18 the promissory note?
19 A. No.
20 Q. Where did you get the \$175,000.00 that was used
21 to make the payment on the note?
22 A. A second mortgage on our house.
23 Q. Was that mortgage taken out solely for that
24 purpose, or was it for some other purposes?
25 A. It was taken out for that purpose and also I

Christene Cohen - 01/11/08

1 A. Yes.

2 Q. They weren't just miscellaneous documents in
3 boxes?

4 A. No.

5 Q. Were there files specific to a particular bank
6 account, so if you wanted to obtain bank statements, you had
7 a specific file you could go to, to get statements from that
8 account?

9 A. I don't know.

10 Q. What about payroll? You were working in payroll.
11 If you made payroll payments, those were kept in
12 a particular file; right?

13 A. I gave them to the bookkeeper, and I don't know
14 what she did with them. I believe they were sent over to
15 Del Mar. We had copies at Old Port, and she weekly sent
16 stuff over to Del Mar.

17 Q. At the close of that business -- cause you were
18 an employee right up to the end; is that right?

19 A. Yes.

20 Q. At the time that it closed, are you aware of a
21 transfer so that some of the accounts went on to the -- were
22 transferred over to Del Mar's books from the Old Port
23 Fisheries/Del Mar's books?

24 A. I don't know.

25 Q. When you agreed to -- you signed a promissory

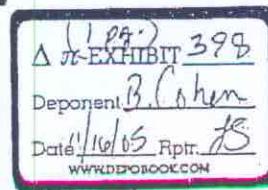
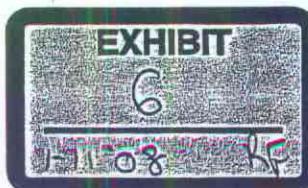
08:55AM FROM-DEL MAR SEAFOODS INC Dm

T-131 P.002/008 F-238

seafoods, Inc.
s of Payment

	Michael Cohen	Olde Port Inn	Inventory	PointofSale	Barry	Total
Beginning Balance	13,820.40	18,050.10	10,283.24	18,524.34	287,025.48	295,420.83
2004 Barry Paymt					(5,000.00)	(5,000.00)
2005 American Payment				(1,474.75)		(1,474.75)
2005 Olde Port PYMT				(1,000.00)		(1,000.00)
2005 Inv. Adj				(1,301.00)		(1,301.00)
2005 Payment from Barry	(13,820.40)	(18,050.10)	(10,283.24)	(18,524.34)	(120,380.70)	(175,000.00)
Ending Balance					171,854.74	171,854.74

[TRIAL EX. 37]



Del Mar Seafoods, Inc.
Schedule of Payments

	Michael Cohen	Olde Port Fisheries	Olde Port Inn	Inventory	Point Loma	Barry	Total
Beginning Balance	13,920.40		18,069.10	10,303.24	16,021.31	237,035.48	295,429.53
12/22/2004 Barry Pymt							(5,000.00)
6/24/2005 American Payment							(1,474.75)
9/14/2005 Olde Port PYMT							(1,000.00)
11/10/2005 Inv. Adj							(1,300.00)
11/10/2005 Payment from Barry							(16,069.10)
12/5/2005 Olde Port Balance (see attached)							7,417.67
12/5/2006 Point Loma Balance (see attached)							1,368.82
Fees for Olde Port Case							21,308.52
2/25/2007 Payment							(2,000.00)
2/25/2007 Payment							(3,000.00)
4/25/2007 Payment							(3,000.00)
6/27/2007							
Ending Balance							7,417.67
							1,368.82
							21,308.52
							133,749.79
							134,963.30
							135,749.79

[Trial Ex. 39]



Barry Balance.xls

Attachment B

CERTIFIED COPY

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

DEL MAR SEAFOODS, INC.,)
)
)
PLAINTIFF,)
)
VS.) NO. C-0702952-WHA
)
BARRY COHEN, CHRIS COHEN)
(CHRISTENE COHEN) IN PERSONAM)
AND, F/V POINT LOMA, OFFICIAL)
NUMBER 515298, A 1968 STEEL-HULLED,)
126-GROSS TON, 70.8 FOOT LONG)
FISHING VESSEL, HER ENGINES,)
TACKLE, FURNITURE APPAREL, ETC.,)
IN REM, AND DOES 1-10,)
)
DEFENDANTS.)
)

DEPOSITION OF DAVID PAUL CANTRELL

SAN LUIS OBISPO, CALIFORNIA

THURSDAY, DECEMBER 27, 2007

12:55 P.M. ~ 3:36 P.M.

REPORTED BY KAREN L. GRENCIK

CSR NO. 7038, RPR



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DAVID PAUL CANTRELL

December 27, 2007

Page 4

1 DAVID PAUL CANTRELL

2 HAVING BEEN FIRST DULY SWORN, WAS
3 EXAMINED AND TESTIFIED AS FOLLOWS:

4

5 EXAMINATION

6

7 BY MR. POULOS:

8 Q COULD YOU STATE YOUR FULL NAME FOR THE RECORD,
9 PLEASE?

10 A DAVID PAUL CANTRELL.

11 Q ALL RIGHT. MR. CANTRELL, BEFORE WE GET STARTED
12 WITH YOUR DEPOSITION, I'D LIKE TO GO AHEAD AND PUT A
13 COUPLE OF ITEMS ON THE RECORD.14 YOU'RE THE ACCOUNTANT FOR BARRY COHEN; IS THAT
15 CORRECT?

16 A CORRECT.

17 Q AND SOME OF HIS BUSINESS DEALINGS?

18 A CORRECT.

19 Q OKAY. WITH THAT, COUNSEL FOR MR. COHEN AND I
20 HAVE HAD A DISCUSSION OFF THE RECORD REGARDING OUR
21 REQUEST FOR CERTAIN TAX RETURN INFORMATION. NOT THE FULL
22 RETURNS THEMSELVES, BUT INFORMATION RELATING TO THE
23 PROFITS AND LOSSES FROM DIFFERENT -- FROM MR. COHEN'S
24 FISHING OPERATIONS.

25 THERE IS AN UNDERSTANDING, COUNSEL HAS PROVIDED

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1 TO SECURE SOME KIND OF DEBT, AND THAT THEY CLAIM -- 200 --
2 KNOW, TOOK THE BOAT TO TRY TO SETTLE THE DEBTS.

3 Q DID YOU HAVE ANY DISCUSSIONS AS TO WHAT THE
4 GENESIS OF THAT DEBT WAS?

5 A NOT IN -- NOT SPECIFICALLY IN REGARD TO THIS
6 ARREST, OR ANYTHING LIKE THAT. I JUST BELIEVE IT WAS THE
7 FUNDS THAT -- THE LOAN THAT WAS \$215,000 ORIGINALLY, AS
8 STIPULATED, I BELIEVE IT RELATED TO THAT, BUT I REALLY
9 DON'T KNOW.

10 Q WERE YOU EVER -- DID YOU EVER HAVE ANY
11 DISCUSSIONS WITH MR. COHEN ABOUT WHETHER THE PRINCIPAL
12 BALANCE OF THAT \$215,000 ON THE NOTE HAD INCREASED OR
13 DECREASED OVER TIME?

14 A I BELIEVE THAT MR. COHEN HAD PROVIDED ME A
15 SCHEDULE THAT TRIED TO ACCOUNT FOR HOW HE HAD MADE
16 PAYMENTS AGAINST THE LOAN. OR POSSIBLY THE SCHEDULE
17 WAS -- WAS ALLOCATING HOW DEL MAR RECORDED PAYMENTS
18 AGAINST THE LOAN. I REALLY DON'T RECALL EXACTLY. BUT MY
19 RECOLLECTION IS THERE WAS A SCHEDULE THAT WAS -- APPEARED
20 TO BE PREPARED ON AN EXCEL SPREADSHEET THAT SHOWED
21 VARIOUS PAYMENTS BEING APPLIED AGAINST THAT DEBT.

22 Q DO YOU RECALL HOW THAT CAME TO YOU? WAS THAT --
23 DID MR. COHEN BRING IT TO YOU PERSONALLY? FAX IT?
24 E-MAIL IT?

25 A I BELIEVE HE MAY HAVE HANDED ME A COPY OF IT,

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1 BUT -- I BELIEVE HE HANDED ME A COPY. THAT'S ALL I CAN

2 SAY.

3 Q DO YOU RECALL WHAT HE -- WHAT, IF ANYTHING, HE
4 SAID WHEN HE GAVE IT TO YOU?5 A YEAH, I THINK THIS WAS AN ACCOUNTING THAT WAS --
6 I BELIEVE IT WAS PREPARED BY DEL MAR --

7 Q OKAY.

8 A -- AS TO HOW THEY HAD APPLIED VARIOUS PAYMENTS.

9 Q DID HE SAY WHETHER IT WAS ACCURATE, INACCURATE,
10 WHAT HE WANTED YOU TO DO WITH IT, WHAT HIS UNDERSTANDING
11 WAS OF IT, ANYTHING?12 A WELL, IT CAME TO -- IT CAME INTO MY POSSESSION
13 IN CONNECTION WITH THE PREPARATION OF A TAX RETURN FOR A
14 DIFFERENT ENTITY.

15 Q OKAY. WHAT ENTITY WAS THAT?

16 A OLD PORTE FISHERIES, INC.

17 Q OKAY.

18 A I DO BELIEVE THAT MR. COHEN CONSIDERED IT AN
19 INCORRECT ALLOCATION OF THE EXPENSES, THE WAY IT WAS
20 DESCRIBED TO ME. INCORRECT ALLOCATION OF THE PAYMENTS.

21 I'M SORRY. I MISSPOKE.

22 Q AND DO YOU RECALL IN WHAT WAY HE CONSIDERED IT
23 AN INCORRECT ALLOCATION?24 A AGAIN, I BELIEVE IT WAS THAT HE HAD MADE -- IN
25 HIS MIND, HE HAD MADE PAYMENTS AGAINST THE DEBT ON THEObjection
FRE 802
Hearsay
FRE 602
Witness
lacks personal
knowledgeObjection
FRE 802
Hearsay
FRE 602
Witness
lacks personal
knowledge

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1 BOAT, THAT DEL MAR UNILATERALLY APPLIED AGAINST
 2 RECEIVABLES THAT DEL MAR HAD ON THEIR BOOKS FROM ENTITIES
 3 OTHER THAN MR. COHEN AS AN INDIVIDUAL.

4 Q DID HE EVER -- DID YOU HAVE ANY DISCUSSION WITH
 5 MR. COHEN ABOUT WHO THOSE INDIVIDUALS WERE? OR WHAT
 6 THOSE NOTES WERE?

7 A WELL, I DON'T BELIEVE THERE WERE NOTES. I
 8 BELIEVE THEY WERE TRADE RECEIVABLES RELATED TO THE OLD
 9 PORTE FISHERIES, INC. I BELIEVE THERE WAS SOME -- AGAIN,
 10 ON THE SCHEDULE, I -- THIS IS JUST THE SCHEDULE PRESENTED
 11 TO ME, SO I DON'T REALLY KNOW WHO ARRIVED AT THESE
 12 NUMBERS -- BUT THERE WAS ALSO LISTED OLD PORTE INN. THE
 13 RESTAURANT BUSINESS WAS LISTED ON THERE. AND I BELIEVE
 14 THAT IT SHOWED THAT AMOUNTS WERE OWED BY THOSE ENTITIES
 15 TO DEL MAR FOR SOME REASON, AND THAT PAYMENTS MADE BY
 16 MR. COHEN HAD BEEN APPLIED AGAINST THOSE CORPORATE DEBTS
 17 AS OPPOSED TO AGAINST HIS LOAN ON THE BOAT.

18 Q OKAY. AND HE BROUGHT THOSE TO YOUR ATTENTION?

19 A HE DID.

20 Q AND HOW -- DID HE EVER TELL YOU THAT HE HAD
 21 ASSUMED RESPONSIBILITY FOR THOSE -- WELL, BACK UP.

22 DID YOU UNDERSTAND THAT THOSE WERE DEBTS -- OR
 23 LIABILITIES INCURRED BY MR. COHEN'S SONS, MICHAEL AND
 24 LEONARD?

25 MR. WALSH: OBJECTION; LACK OF FOUNDATION, CALLS FOR

*Objection
(see next page)*

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1 SPECULATION

2 BY MR. POULOS:

3 Q I'M JUST ASKING IF YOU HAD ANY -- HAD HEARD THAT
4 OR UNDERSTOOD IT IN SOME WAY?5 A HONESTLY, I UNDERSTOOD THEM TO BE CORPORATE
6 DEBTS, AND THEY WEREN'T PERSONAL OBLIGATIONS.7 Q CORPORATE DEBTS INCURRED BY BUSINESSES IN WHICH
8 THOSE SONS HAD AN INTEREST?9 A WELL, WITH REGARD TO OLD PORTE INN, MR. LEONARD
10 COHEN HAS AN INTEREST. WITH REGARD TO OLD PORTE
11 FISHERIES, I DON'T KNOW THAT MIKE COHEN HAS AN INTEREST..12 Q OKAY. WITH RESPECT TO THOSE SUMS, DID MR. COHEN
13 EVER RELATE TO YOU -- MR. BARRY COHEN -- THAT HE HAD AN
14 AGREEMENT THAT THOSE SUMS WOULD BE ADDED TO HIS BALANCE
15 UNDER THE NOTE?16 A NO. MY RECOLLECTION IS THAT HE SPECIFICALLY DID
17 NOT THINK THEY WERE ADDED TO THE NOTE. BUT I'M GOING
18 FROM RECOLLECTION ONLY. THERE'S NO --

19 Q DO YOU HAVE NOTES OF THAT CONVERSATION?

20 A I DON'T BELIEVE SO, NO.

21 Q HOW WERE THOSE -- YOU SAID THOSE CAME TO YOU IN
22 TERMS OF PREPARATION OF A TAX RETURN FOR THE OLD PORTE
23 FISHERIES, INC.?

24 A CORRECT.

25 Q HOW WERE THOSE SUMS, IF YOU CAN TELL ME,

Objection
 Federal Rules
 of Evid. 802
 Hessey
 and
 F.R.E. 602
 witness lacks
 personal
 knowledge

Completeness

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1 ~~MR. POULOS: ORAY. LET'S TAKE A SHORT BREAK.~~
2 BECAUSE I THINK I KNOW THE SCHEDULE, AND I'LL SEE IF
3 THAT'S THE SCHEDULE THAT YOU'RE REFERRING TO.
4 ~~THE WITNESS: SURE.~~

5 (RECESS TAKEN.)

6 MR. POULOS: BACK ON THE RECORD.

7 Q DO YOU RECALL ANY DISCUSSIONS WITH -- WELL,
8 WITHDRAWN.

[TRIAL EX. 38]

9 LET'S MARK AS EXHIBIT 3 A PAGE THAT WAS, I
10 BELIEVE, EXHIBIT 21 TO THE DEPOSITION OF JOE ROGGIO.

11 (PLAINTIFF'S EXHIBIT 3 WAS MARKED
12 FOR IDENTIFICATION.)

13 BY MR. POULOS:

14 ~~O AND I'LL REPRESENT ON THE RECORD THE HANDWRITING~~
15 ~~IN THE LOWER RIGHT-HAND CORNER, WHERE IT SAYS, "EX 21,"~~
16 ~~IS MY HANDWRITING, BUT IT'S THE ONLY COPY I BROUGHT WITH~~
17 ~~ME.~~

18 MR. WALSH: WE CAN MAKE ANOTHER COPY.

19 MR. POULOS: I MEAN, WE COULD BLANK OUT THE "EX" --

20 MR. WALSH: I DON'T CARE.

21 ~~MR. POULOS: BUT I DON'T THINK IT'S NECESSARY~~

22 Q IF YOU COULD TAKE A LOOK AT WHAT IS NOW
[TRIAL EX. 38]
23 EXHIBIT 3 TO YOUR DEPOSITION. AND THIS, FOR THE RECORD,
24 IS DMSI -- BATES NUMBER DMSI 0111. DO YOU RECOGNIZE THIS
25 DOCUMENT?

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1 A YES.

2 Q AND IS THIS THE SPREADSHEET THAT YOU WERE
3 REFERRING TO EARLIER THAT MR. BARRY COHEN PROVIDED TO
4 YOU?

5 A IT APPEARS TO BE.

6 Q OKAY. THAT'S NOT IN -- IN THE FILE RELATED --
7 THAT YOU BROUGHT WITH YOU PURSUANT TO THE SUBPENA. DO
8 YOU KNOW IF YOU HAVE A COPY OF THIS SOMEWHERE IN YOUR
9 OTHER RECORDS?

10 A I DO.

11 Q AND WHICH RECORDS ARE THOSE IN?

12 A THE TAX RECORDS FOR OLD PORTE FISHERIES.

13 Q OKAY. SO THOSE RECORDS WOULD SHOW HOW THESE
14 ITEMS, IF THEY WERE TREATED ON TAX RETURNS, WERE TREATED,
15 I TAKE IT?

16 A I DON'T THINK YOU CAN SAY THAT.

17 Q OKAY. DO YOU RECALL WHEN MR. COHEN BROUGHT THIS
18 SCHEDULE TO YOU?

19 A I BELIEVE I RECEIVED IT IN THE YEAR 2007, BUT I
20 DO NOT RECALL WHEN.

21 Q OKAY. DO YOU RECALL WHAT ITEMS, IF ANY ON HERE,
22 MR. COHEN FELT WERE NOT HIS DEBTS, THAT SHOULD HAVE
23 BEEN -- OR WERE NOT PROPERLY ALLOCATED TO HIS PAYMENT?

24 A MY RECOLLECTION IS THAT MR. COHEN TOLD ME THAT
25 THIS REPRESENTED WHAT DEL MAR DID WITH HIS PAYMENTS, BUT

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1 THAT, IN HIS OPINION, THE PAYMENTS SHOULD HAVE BEEN
 2 APPLIED TO HIS BOAT LOAN. THAT'S THE WAY I UNDERSTOOD
 3 IT.

4 Q OKAY. WHICH PAYMENTS DID HE -- DID HE FEEL WERE
 5 NOT PROPERLY ALLOCATED, IF YOU CAN RECALL?

6 MR. WALSH: I BELIEVE HE'S ANSWERED THAT GENERALLY.
 7 THE WITNESS: YEAH, I REALLY CAN'T RECALL THE
 8 SPECIFIC DOLLAR AMOUNT THAT HE OBJECTED TO OR DIDN'T
 9 OBJECT TO. IT JUST -- THAT WAS MY GENERAL UNDERSTANDING
 10 OF IT.

11 BY MR. POULOS:

12 Q ALL RIGHT. LET'S GO THROUGH THESE IN ORDER.

13 THERE IS A COLUMN THAT SAYS, "MICHAEL COHEN";
 14 CORRECT?

15 A CORRECT.

16 Q AND YOU UNDERSTAND THAT TO BE MICHAEL COHEN,
 17 BARRY COHEN'S SON?

18 A I DO UNDERSTAND IT TO BE THAT.

19 Q OKAY. AND WHAT IS -- WHAT BUSINESS DOES MICHAEL
 20 COHEN HAVE, THAT YOU ARE AWARE OF?

21 A MICHAEL COHEN IS AN EMPLOYEE OF OLD PORTE
 22 FISHERIES, INC.

23 Q OKAY. THERE IS A PAYMENT SHOWN OF 13,920 --
 24 WELL, A BEGINNING BALANCE OF 13,920.40, AND THEN A
 25 PAYMENT DATED 11/10/2005 FROM BARRY FOR THAT AMOUNT. DO

Completeness

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1 THIS A FIGURE THAT IS SOMEHOW ACCOUNTED FOR SOMEWHERE IN
 2 MR. COHEN'S RETURNS? SO THAT IF HE DOESN'T HAVE THE
 3 INFORMATION, WE KNOW WE CAN COME BACK TO YOU

4 MR. WALSH: YOU CAN'T ANSWER THAT QUESTION BECAUSE
 5 IT CALLS FOR SPECULATION ABOUT MICHAEL COHEN, AND SO --
 6 IT SEEMS TO ME THAT YOU'RE ASKING HIM A QUESTION ABOUT
 7 WHAT MIGHT BE IN MICHAEL COHEN'S TAX RETURNS.

8 MR. POULOS: NO, ONLY IN BARRY'S. IF IT'S A FIGURE
 9 THAT'S ACCOUNTED FOR SOMEWHERE IN BARRY'S RETURNS, NOT
 10 MICHAEL'S

11 MR. WALSH: \$13,000?

12 MR. POULOS: RIGHT.

13 MR. WALSH: OKAY.

14 THE WITNESS: I -- I BELIEVE IT IS A FIGURE THAT'S
 15 ACCOUNTED FOR IN -- IN A CORPORATE ENTITY.

16 BY MR. POULOS:

17 Q OKAY. THE NEXT COLUMN OVER, IN TERMS OF THAT
 18 PAYMENT FROM BARRY ON 11/10/2005, THAT'S THE \$175,000
 19 PAYMENT; RIGHT?

20 A CORRECT.

21 Q AND THIS IS THE ONE THAT BARRY -- THAT ONE
 22 PAYMENT IS THE ONE IN THE ALLOCATION THAT BARRY TOLD YOU
 23 HE DISPUTED THE ALLOCATION; IS THAT RIGHT?

24 A WELL, HE DID DISPUTE THAT ALLOCATION, YES.

25 Q RIGHT. OKAY. DID HE DISPUTE, TO YOUR

*Objection
 F.R.E. 802
 Hearsay
 F.R.E. 602
 witness
 lacks
 personal
 knowledge*

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1 UNDERSTANDING -- OR DID HE TELL YOU THAT HE DISPUTED THE
 2 ALLOCATION OF \$18,069.10 TO OLD PORTE INN DEBT?

3 A YES, I BELIEVE HE FELT THAT WAS INCORRECT.

4 Q AND THE SAME SORT OF FOUNDATIONAL QUESTION. I
 5 THAT FIGURE SOMEWHERE DEALT WITH ON EITHER BARRY'S
 6 PERSONAL OR A CORPORATE RETURN?

7 AGAIN, NOT HOW IT'S ATTRIBUTED OR TREATED. JUST
 8 IS IT SOMEWHERE ATTRIBUTED?

9 A I DON'T -- YOU KNOW, I REALLY CAN'T ANSWER THAT,
 10 BECAUSE OLD PORTE INN, INC., IS AN UNRELATED CLIENT, AND
 11 THIS WAS APPARENTLY A DEBT FROM OLD PORTE INN, INC., TO
 12 DEL MAR.

13 Q OKAY. THAT OLD PORTE INN, INC., IS THE SUB-S
 14 CORPORATION WE WERE JUST TALKING ABOUT?

15 A NO.

16 Q OKAY. OLD PORTE INN, INC., IS A SEPARATE ENTITY
 17 FROM OLD PORTE FISHERIES, INC.?

18 A CORRECT.

19 Q OKAY. OLD PORTE INN, INC., IS THAT LEONARD'S --

20 A CORRECT.

21 Q -- COMPANY?

22 A YES. I'M SORRY.

23 Q OKAY. TOO MANY OLD PORTES.

24 MR. COHEN: NOT ENOUGH AS FAR AS I'M CONCERNED.

25 MR. WALSH: YOU'VE GOT TO COME UP WITH A NEW ONE.

Objection
 Hesay
 THE 302
 + THE 602
 witness
 lacks personal
 knowledge

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1 ~~1 THAT IS BARRY COHEN'S SUB-S CORPORATION?~~2 A ~~CORRECT.~~3 Q ~~OKAY. DID HE EVER TELL YOU -- WITHDRAWN.~~4 ~~DID BARRY COHEN EVER TELL YOU THAT THE~~
5 ~~CORPORATION, HIS SUB-S CORPORATION, DID NOT OWE THAT~~
6 ~~MONEY?~~7 A ~~NO, I DON'T BELIEVE HE EVER SAID THAT.~~8 Q ~~OKAY. DID HE DISPUTE THIS PARTICULAR PORTION OF~~
9 ~~THE ALLOCATION OF THE \$175,000?~~10 ~~MR. WALSH ASKED AND ANSWERED. HE'S ALREADY SAID~~
11 ~~THAT HE DID DISPUTE IT.~~

12 BY MR. POULOS:

13 Q ~~GO AHEAD AND ANSWER AGAIN.~~14 A ~~I BELIEVE HE DISPUTED EACH ONE OF THESE FIGURES~~
15 ~~BEING ALLOCATED AGAINST THE AMOUNTS SHOWN AT THE TOP. I~~
16 ~~BELIEVE -- MY UNDERSTANDING WAS THAT HE THOUGHT THE~~
17 ~~\$175,000 PAYMENT SHOULD HAVE BEEN APPLIED TO THE BOAT~~
18 ~~LOAN SOLELY, AND NO PART SHOULD HAVE BEEN APPLIED TO~~
19 ~~THESE OTHER THINGS. THAT'S HOW I UNDERSTOOD IT.~~20 Q ~~THE BOAT LOAN, IS THAT THE -- WHAT DID -- WELL,~~
21 ~~LET'S FINISH THIS PROCESS. I'LL WITHDRAW ALL THAT.~~22 ~~LOOKING AT THE NEXT COLUMN, "POINT LOMA," AN~~
23 ~~ALLOCATION FROM THAT 175 OF 16,021.31, WHAT WAS YOUR~~
24 ~~UNDERSTANDING OF WHAT THAT REFERENCE WAS TO?~~25 A ~~I BELIEVE "POINT LOMA" REFERS TO THE FISHING~~

Objection
 FRE 802
 Hearsay
 FRE 602
 calls for
 speculation

	Michael Cohen	Olde Port Fisheries	Olde Port Inn	Inventory	Point Loma	Barry	Total
					2,32,035.48	295,425.33	295,425.33
Beginning Balance	13,920.40		16,069.10	10,383.24	16,021.31	(5,000.00)	(5,000.00)
12/22/2004 Barry Payment					(1,474.75)		(1,474.75)
8/24/2005 American Payment					(1,000.00)		(1,000.00)
9/14/2005 Olde Port PYMT					(1,300.00)		(1,300.00)
11/10/2006 Inv. Adj					(6,508.49)	(16,021.31)	(120,380.70)
11/10/2005 Payment from Barry							(175,000.00)
12/5/2006 Olde Port Balance (see attached)					7,417.67		7,417.67
12/5/2006 Point Loma Balance (see attached)						1,368.82	1,368.82
Fees for Olde Port Case						21,308.52	21,308.52
2/5/2007 Payment						(2,000.00)	(2,000.00)
2/20/2007 Payment						(3,000.00)	(3,000.00)
4/25/2007 Payment						(3,000.00)	(3,000.00)
Ending Balance					7,417.67		
						1,368.82	1,368.82
						21,308.52	21,308.52
						(2,000.00)	(2,000.00)
						(3,000.00)	(3,000.00)
						(3,000.00)	(3,000.00)



[TRIAL EX 38]

Attachment C

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1 BOAT, THAT DEL MAR UNILATERALLY APPLIED AGAINST
2 RECEIVABLES THAT DEL MAR HAD ON THEIR BOOKS FROM ENTITIES
3 OTHER THAN MR. COHEN AS AN INDIVIDUAL.

4 Q DID HE EVER -- DID YOU HAVE ANY DISCUSSION WITH
5 MR. COHEN ABOUT WHO THOSE INDIVIDUALS WERE? OR WHAT
6 THOSE NOTES WERE?

7 A WELL, I DON'T BELIEVE THERE WERE NOTES. I
8 BELIEVE THEY WERE TRADE RECEIVABLES RELATED TO THE OLD
9 PORTE FISHERIES, INC. I BELIEVE THERE WAS SOME -- AGAIN,
10 ON THE SCHEDULE, I -- THIS IS JUST THE SCHEDULE PRESENTED
11 TO ME, SO I DON'T REALLY KNOW WHO ARRIVED AT THESE
12 NUMBERS -- BUT THERE WAS ALSO LISTED OLD PORTE INN. THE
13 RESTAURANT BUSINESS WAS LISTED ON THERE. AND I BELIEVE
14 THAT IT SHOWED THAT AMOUNTS WERE OWED BY THOSE ENTITIES
15 TO DEL MAR FOR SOME REASON, AND THAT PAYMENTS MADE BY
16 MR. COHEN HAD BEEN APPLIED AGAINST THOSE CORPORATE DEBTS
17 AS OPPOSED TO AGAINST HIS LOAN ON THE BOAT.

18 Q OKAY. AND HE BROUGHT THOSE TO YOUR ATTENTION?

19 A HE DID.

20 Q AND HOW -- DID HE EVER TELL YOU THAT HE HAD
21 ASSUMED RESPONSIBILITY FOR THOSE -- WELL, BACK UP.

22 Q DID YOU UNDERSTAND THAT THOSE WERE DEBTS -- OR
23 LIABILITIES INCURRED BY MR. COHEN'S SONS, MICHAEL AND
24 LEONARD?

25 MR. WALSH: OBJECTION; LACK OF FOUNDATION, CALLS FOR

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1 ALLOCATED -- HOW DID THOSE SUMS RELATE TO YOUR
2 PREPARATION OF A TAX RETURN FOR THE OLD PORTE FISHERIES?
3 A BECAUSE IN ORDER TO PREPARE THE TAX RETURN, THE
4 CORPORATION ALSO HAS TO REFLECT ITS RECEIVABLES AND
5 PAYABLES AND OBLIGATIONS THAT THE CORPORATION HAS,
6 REALLY. AND IT CAME TO MY ATTENTION, IN THE PREPARATION
7 OF THE RETURN, THAT THESE DEBTS HAD BEEN, QUOTE, PAID,
8 AND THAT THEY WERE NO LONGER ACTUALLY OWED TO DEL MAR, AT
9 LEAST BY DEL MAR'S CALCULATION. AND, THEREFORE, THE
10 CORPORATION, OLD PORTE FISHERIES, WOULD BE OBLIGATED TO
11 REPAY MR. COHEN FOR THE SETTLEMENT OF THOSE CORPORATE
12 DEBTS. AND THAT'S WHY IT BECAME AN ISSUE FOR ME AS TO
13 HOW TO PROPERLY ALLOCATE THE LIABILITIES.

14 Q CAN YOU TELL US HOW THEY WERE ALLOCATED, THEN,
15 IN THE PREPARATION OF THAT RETURN? WERE THEY -- DID THE
16 CORPORATION THEN DO AS YOU SAID, TREAT THEM AS HAVING
17 BEEN PAID OFF, AND THEN THE CORPORATION ASSUMED A DEBT TO
18 MR. COHEN?

19 A WELL, ULTIMATELY, I DON'T THINK THAT'S HOW THE
20 RETURN WAS FINALIZED, BUT I REALLY THINK WE'RE CROSSING
21 THE LINE HERE FROM JUST GENERAL KNOWLEDGE AND IT'S MORE
22 ABOUT TAX PREPARATION AT THIS TIME.

23 Q WE'RE CERTAINLY ON THE EDGE, AND I DON'T
24 NECESSARILY WANT TO CROSS OVER IT. I WANT TO BE
25 SENSITIVE TO THAT. BUT AT ISSUE HERE -- AND I'M NOT

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1 SPECULATION.

2 BY MR. POULOS:

3 Q I'M JUST ASKING IF YOU HAD ANY -- HAD HEARD THAT
4 OR UNDERSTOOD IT IN SOME WAY?

5 A HONESTLY, I UNDERSTOOD THEM TO BE CORPORATE
6 DEBTS, AND THEY WEREN'T PERSONAL OBLIGATIONS.

7 Q CORPORATE DEBTS INCURRED BY BUSINESSES IN WHICH
8 THOSE SONS HAD AN INTEREST?

9 A WELL, WITH REGARD TO OLD PORTE INN, MR. LEONARD
10 COHEN HAS AN INTEREST. WITH REGARD TO OLD PORTE
11 FISHERIES, I DON'T KNOW THAT MIKE COHEN HAS AN INTEREST.

12 Q OKAY. WITH RESPECT TO THOSE SUMS, DID MR. COHEN
13 EVER RELATE TO YOU -- MR. BARRY COHEN -- THAT HE HAD AN
14 AGREEMENT THAT THOSE SUMS WOULD BE ADDED TO HIS BALANCE
15 UNDER THE NOTE?

16 A NO. MY RECOLLECTION IS THAT HE SPECIFICALLY DID
17 NOT THINK THEY WERE ADDED TO THE NOTE. BUT I'M GOING
18 FROM RECOLLECTION ONLY. THERE'S NO --

19 Q DO YOU HAVE NOTES OF THAT CONVERSATION?

20 A I DON'T BELIEVE SO, NO.

21 Q HOW WERE THOSE -- YOU SAID THOSE CAME TO YOU IN
22 TERMS OF PREPARATION OF A TAX RETURN FOR THE OLD PORTE
23 FISHERIES, INC.?

24 A CORRECT.

25 Q HOW WERE THOSE SUMS, IF YOU CAN TELL ME,

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1 SURE, COUNSEL, HOW WE CAN DEAL WITH THIS -- AT ISSUE IS,
2 OBVIOUSLY, IF THE -- IF THE TAX RETURNS -- IF A CREDIT IS
3 BEING CLAIMED ON SOME TAX RETURNS RELATED TO THIS, AND
4 THEN AN OPPOSITE POSITION IS BEING TAKEN HERE IN TERMS OF
5 WHETHER OR NOT THOSE DEBTS WERE SATISFIED OR THE
6 ALLOCATION WAS PROPER, WE NEED TO KNOW THAT. AND IT'S A
7 SEPARATE ENTITY FROM MR. COHEN.

8 IT'S A -- IT'S A CALIFORNIA CORPORATION?

9 A YES.

10 MR. WALSH: WELL, IT'S NOT A PARTY, AND, YOU KNOW, I
11 THINK IT'S TOO COMPLICATED FOR ME TO RESPOND TO, BECAUSE
12 THEY'RE NOT A PARTY. YOU DIDN'T ADD THEM AS A PARTY. SO
13 I THINK IT WOULD BE IMPROPER FOR HIM TO RESPOND. AND I
14 DON'T EVEN NEED TO GIVE HIM AN INSTRUCTION.

15 YOU CAN JUST REFUSE TO, IF HE'S GETTING INTO
16 THAT.

17 OBVIOUSLY, THOSE QUESTIONS, YOU KNOW, YOU'RE
18 GOING TO HAVE TO ASK OF SOMEBODY ELSE WHO CAN ANSWER
19 THEM, AND -- I MEAN, I JUST DON'T THINK HE CAN ANSWER.

20 AND SINCE HE -- THIS IS NOT PERSONAL TO
21 MR. COHEN, OBVIOUSLY. HE CAN'T TELL HIM TO DO SOMETHING
22 THAT HAS TO DO WITH HIS CORPORATE RESPONSIBILITIES. AND
23 THE LAW IS PRETTY CLEAR THAT, UNLESS HE HAS WRITTEN
24 PERMISSION, HE'S -- HE'S FACING A MISDEMEANOR, SO HE
25 CAN'T REALLY TALK ABOUT THAT. AND I CAN'T SAY ANYTHING

17 (Pages 62 to 65)